



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
Washington, D.C. 20460

OFFICE OF  
GENERAL COUNSEL

October 28, 2022

**MEMORANDUM**

**SUBJECT:** Limited Impartiality Determination to Participate in Certain Specific Party Matters Involving the University of Massachusetts Boston

**FROM:** Justina Fugh  
Alternate Designated Agency Ethics Official and  
Director, Ethics Office

**TO:** David Cash  
Regional Administrator  
Region 1

As Regional Administrator for the United States Environmental Protection Agency (EPA) Region 1, you seek to engage with local colleges and universities to explore ways to increase interest in EPA as an employer, increase diversity among the applicant pool, and otherwise interact with local universities on how issues directly related to the EPA's mission. Your contemplated activities include speaking about the EPA with students and faculty; discussing careers in Federal service; talking with faculty, students and staff on climate change, environmental justice, and other related topics; and exchanging ideas on how to garner university assistance or ideas to support communities with environmental justice concerns.

One of the colleges you wish to contact is the University of Massachusetts Boston (UMass Boston), your former employer. Within the last year, you served as an Associate Professor and the Dean of the John W. McCormack Graduate School of Policy and Global Studies at UMass Boston. Pursuant to Executive Order 13989 and the Biden Ethics Pledge that you signed upon appointment, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, a state government, including a state university, is excluded under the definition of "former employer."<sup>1</sup> Therefore, the Ethics Pledge does not apply to UMass Boston.

I understand that you have a defined benefit plan with the Commonwealth of Massachusetts. As such, you have a financial conflict of interest pursuant to 18 U.S.C. § 208.

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<sup>1</sup> See Exec. Order 13989, Section 2(k), which provides that "'former employer' does not include...State or local government."

Under this criminal statute, you cannot participate personally and substantially in any particular matter that will affect the Commonwealth's ability or willingness to honor its contractual obligations with respect to your state retirement interests. In the Agency's experience, it is unlikely that your duties as the Regional Administrator will be in any position to affect the Commonwealth's ability or willingness to pay these benefits to its retirees. I do not expect that 18 U.S.C. § 208 will prohibit you from carrying out your official EPA duties.

What remains, however, is an impartiality concern. The applicable ethics rules are set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." Upon assuming the position of Regional Administrator, you have a "covered relationship" with UMass Boston. 5 C.F.R. § 2635.502(b)(1)(iv). For one year after February 4, 2022 when you left the university, absent an impartiality determination from an EPA ethics official, you cannot participate in any specific party matter in which UMass Boston is a party or represents a party if that matter is likely to have a direct and predictable effect upon the university or if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

As Regional Administrator, you are the leader of your Region and part of the Agency's political team. You have an interest in expanding opportunities for employment in your region and in reaching out to university students, faculty and staff about the EPA and environmental issues. To that end, you wish to engage directly with UMass Boston on this topic, including entering into a possible memorandum of understanding (MOU) that you would sign. I recognize that you will be pursuing similar conversations with other academic institutions and conclude that the interest of the United States Government in your participation with UMass Boston outweighs any concerns about your impartiality. I am therefore authorizing you to participate as Regional Administrator with UMass Boston to engage in discussion and other engagement related to forging and implementing a cooperative relationship with UMass Boston, among other universities. You are authorized to review and sign a Memorandum of Understanding with UMass Boston.

In making this limited determination, I remind you that you must still recuse yourself from participation in specific party matters in which you participated personally and substantially while employed at UMass Boston. I have taken the following factors into consideration:

Nature of the relationship involved - You served as an Associate Professor and the Dean of the John W. McCormack Graduate School of Policy and Global Studies at UMass Boston from July 2015 to August 2021; and as an unpaid Distinguished Fellow at the UMass Boston Sustainable Solutions Lab from August 2021-February 2022. While in these positions, you did not hold any position with the university's environmental compliance office, and you were not involved in any matters that involved the enforcement of environmental actions against the university or UMass Boston's compliance with environmental laws. Instead, you were involved in environmental policies from a high-level, theoretical and academic perspective.

Effect of the matter upon your financial interest - I understand that you have a defined benefit plan with the Commonwealth of Massachusetts. Although you have a financial conflict of interest pursuant to 18 U.S.C. § 208, it is not disqualifying. *See* 5 C.F.R. §§ 2640.201(c)(1)(ii) and 2640.201(c)(2). In EPA's experience, it is unlikely you as the Regional Administrator will be in any position to affect the Commonwealth's or the university's ability or willingness to pay benefits to its retirees.

Nature and importance of the employee's role - In your role as Regional Administrator, you serve a pivotal role in exploring opportunities to increase diversity among your employees. You have indicated that you would like to communicate directly with all of the universities and colleges in New England, including UMass Boston, which happens to be the most diverse university in New England and the third most diverse university in the United States. It is also the City of Boston's only public research university. Allowing you to communicate directly with this university is vital to furthering your region's employment diversity interests.

Sensitivity of the matter - We anticipate that the Region may want to enter into an MOU with UMass Boston. This specific party matter will merit your participation.

Difficulty of reassigning the matter to another employee – As the Regional Administrator, you represent the region and its commitments in employment diversity.

This authorization will remain in effect for the remainder of your cooling off period. After February 4, 2023, you will no longer have a covered relationship with UMass Boston under the impartiality standards and will no longer require this determination.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact me at [fugh.justina@epa.gov](mailto:fugh.justina@epa.gov) or (202) 564-1786.

cc: Deb Szaro, Deputy Regional Administrator, Region 1  
Sanjay Seth, Chief of Staff, Region 1  
Carl Dierker, Regional Counsel, Region 1  
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